

**UNITED STATES DEPARTMENT OF JUSTICE**  
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
**UNITED STATES IMMIGRATION COURT**  
**BOSTON, MASSACHUSETTS**

**LOCAL OPERATING PROCEDURES**

**PREAMBLE** These rules are adopted under the authority of 8 C.F.R. § 3.40 for the purpose of facilitating the convenient, efficient, and orderly conduct of the business of the United States Immigration Court in Boston, Massachusetts ("the Court"). These rules govern the procedures within the jurisdiction of the United States Immigration Court in Boston, Massachusetts.

**PROCEDURE 1. GENERAL**

**1.1** All matters shall proceed at the time and date scheduled for hearing. All parties shall be prepared to go forward with their cases at that time.

**PROCEDURE 2. FILING PROCEDURES**

**General**

**2.1** All documents, applications, and written motions shall be filed by mail, in person or by other delivery service at the reception window of the Court during regular hours as posted in the Court, or as otherwise directed by the presiding Immigration Judge.

**2.2** All documents, applications and motions requiring payment of a fee shall be accompanied by a fee receipt from the Immigration and Naturalization Service or by an application for a fee waiver pursuant to 8 C.F.R. § 3.24, except as provided in 8 C.F.R. § 240.11(f).

### **Form of Submission**

**2.3** In addition to complying with 8 C.F.R. §§ 3.31 and 3.32, all documents, applications, and motions submitted for consideration by the Court shall be **two-hole punched** at the top and center of the page with holes 2 3/4 inches apart. All submissions must bear the name, file number of the case, and the date of the upcoming Master or Individual Calendar hearing.

**2.4** A document smaller than 8 ½ x 11 inches, shall be affixed to an 8 ½ x 11 inch blank sheet of paper or enlarged to 8 ½ x 11. If the document is larger than 8 ½ x 11 inches, it must be reduced in size by photocopying or other appropriate means as authorized by the presiding Immigration Judge. An exception shall be made for those documents whose size cannot be altered without altering their authenticity. All documents must be legible. Copies which are so poor in quality as to be illegible will be returned to the submitting party and not included in the record.

**2.5(a)** Unless otherwise instructed by the presiding Immigration Judge, all exhibits and documents exceeding five (5) pages in length shall have as a first page an index. Each page of exhibits and documents shall be identified with a page number identification in the lower right corner. If, in addition to page numbering, exhibit tabs are used, they are to be placed at the right side of the document or at the bottom of the document.

**2.5(b)** A certificate of service showing service on the opposing party shall be attached as the last page of the documentation submitted, and such certificate shall specifically

describe the nature of the documents served.

**2.5(c)** Any submission not meeting these requirements may be rejected and returned to the offeror.

### **Timing of Submissions**

**2.6(a)** All documents, applications, and motions must be filed by the date ordered by the presiding Immigration Judge, except as otherwise provided by 8 C.F.R. § 3.23. If no date has been ordered by the presiding Immigration Judge, all materials must be filed no later than ten (10) calendar days prior to the scheduled hearing unless otherwise authorized by the presiding Immigration Judge. If a document is offered after the expiration of the filing deadline, or within ten (10) days of the date of the hearing if no deadline was set, the document will not be accepted unless supported by a declaration of counsel for the offeror or, if not represented, a declaration by the unrepresented party that the document is material and was not available and could not have been discovered or presented by the filing deadline. Documentation filed in an untimely manner may also be accepted at the discretion of the presiding Immigration Judge for good cause shown.

**2.6(b)** Any objection to a proposed exhibit must be raised at the scheduled hearing. The objection must set forth the specific basis for the objection and be supported with appropriate evidentiary materials.

#### **Identification of Proposed Witnesses**

**2.7(a)** When so ordered by the presiding Immigration Judge, counsel shall provide a list of proposed witnesses intended to be called, excluding the respondent, and a brief proffer of each witness' testimony to include the estimated length of the testimony and the language in which the witness will testify. All proposed witness lists, along with proffers, must be filed by the date ordered by the presiding Immigration Judge. If no date has been ordered by the presiding Immigration Judge, the witness list shall be filed no later than ten (10) calendar days prior to the scheduled Individual Calendar hearing unless otherwise authorized by the presiding Immigration Judge. If a witness list is offered after the expiration of the filing deadline, or within ten (10) days of the date of the hearing if no deadline was set, the witness may be precluded from testifying unless the witness list is supported by a declaration of counsel for the offeror that the witness' testimony is material and was not available and could not have been discovered or presented by the filing deadline. The presiding Immigration Judge may also excuse the late filing of a witness list for good cause shown.

**2.7(b)** Any objection to the proposed testimony of a witness should be filed within five (5) days of the filing of the proposed witness list. The objection must set forth the specific basis for the objection and be supported by appropriate evidentiary materials.

**2.7(c)** All such submissions must bear the name, file number of the case, and the date of the Master or Individual Calendar hearing.

### **PROCEDURE 3. MOTIONS**

**3.1** In addition to complying with 8 C.F.R. § 3.23, all written pre-hearing motions shall be accompanied by a proposed order for signature by the presiding Immigration Judge. Proposed orders must conform to the format contained in Appendix A. All written pre-hearing motions will be decided on the basis of the written record unless the presiding Immigration Judge determines that oral argument is necessary.

**3.2** A motion submitted on a pre-decision basis must bear the name and file number of the case. It must include the date and time of the upcoming hearing and the name of the presiding Immigration Judge.

**3.3** A motion submitted on a post-decision basis shall bear the case name, file number and the phrase "POST-DECISION MOTION" in prominent letters in the caption. If applicable, it must indicate whether an appeal from the decision was taken to the Board of Immigration Appeals. If it is a motion to reopen or reconsider, it must comport with 8 C.F.R. § 3.23(b) and the provisions cited therein. A motion to reopen must also reference whether an automatic stay applies to the case.

**3.4** In accordance with 8 C.F.R. §§ 3.23(a) and (b), except as otherwise ordered by the presiding Immigration Judge, any party opposing a motion served pursuant to the provisions of 8 C.F.R. §§ 3.13 and 3.32 shall, no later than thirteen (13) days after the filing of the motion, file with the Court a written response to said motion. All motions not responded to in a timely manner shall be deemed unopposed under 8 C.F.R. § 3.23(a).

**3.5** Pursuant to 8 C.F.R. § 3.23(a), motions must be accompanied by a certificate of service showing service upon the opposing party. When correspondence is received from attorneys without a certificate of service, the Court will routinely return it to the attorney with a form letter noting the deficiency; such motions will not be considered filed with the Court.

**3.6** Any motion not meeting the above requirements will not be accepted for filing or consideration and will be returned to the offeror.

#### **PROCEDURE 4. CONTINUANCES**

**4.1** In addition to complying with 8 C.F.R. §§ 3.29 and 3.32(a), a request for continuance of any scheduled hearing shall be made by written motion, supported, where appropriate, by an affidavit or declaration signed under the penalty of perjury, setting forth in detail the nature of the request and the reasons therefor. The motion shall include the date and time of the scheduled hearing, and the alien's name and file number.

**4.2** The motion shall be filed with the Court no later than fourteen (14) days prior to the scheduled hearing. Motions submitted within fourteen (14) days of the hearing will be considered in case of emergency or unusual circumstances, at the discretion of the presiding Immigration Judge. Any party opposing a motion for continuance shall, no later than ten (10) days after the filing of the motion, file with the Court a written response to said motion. All motions not responded to in a timely manner shall be deemed unopposed.

**4.3** Pendency of a motion for continuance will not excuse appearance of the respondent or applicant at any scheduled hearing addressed by the motion. Unless notified by the Court that the continuance has been granted, all parties must attend the hearing and be prepared to go forward. Counsel is encouraged to seek agreement on continuance prior to the submission of the motion.

#### **PROCEDURE 5. WITHDRAWAL AND SUBSTITUTION OF COUNSEL**

**5.1** Withdrawal of counsel is only by permission of the presiding Immigration Judge assigned to the matter in question. Withdrawal of representation shall be requested by written or oral motion addressed to the presiding Immigration Judge to whom the matter is assigned. The motion for withdrawal shall set forth the following:

A. The reason(s) for the request;

B. Evidence of the client's consent to withdraw or a statement of why evidence of such consent is unobtainable;

C. That a good faith effort was made to locate alternate representation with a recitation of the specific efforts made, or that the Massachusetts Bar Association and Boston Bar Association telephone numbers were provided to the client;

D. All efforts made to notify the client of the motion to withdraw;

E. That the client has been notified of all outstanding deadlines in the case and of the date, time and place of the next scheduled hearing in the matter; of the necessity of appearing at scheduled hearings; and of the consequences of failure to meet deadlines or appear at scheduled hearings; and

- The last known address of the client.

**5.2** Motions for withdrawal of counsel shall be submitted no later than thirty (30) days prior to the next scheduled Individual Calendar hearing date; and no later than fourteen (14) days prior to any Master Calendar hearing. Motions not timely filed may only be granted in the discretion of the presiding Immigration Judge where good cause for the failure to timely file has been established.

**5.3** Substitution of counsel shall be requested by written or oral motion accompanied by Notice of Entry of Appearance on Form EOIR-28 completed by the attorney/representative assuming representation in the matter. Such motion shall be accompanied by evidence that the client is aware of the substitution or that a reasonable attempt has been made to make the client aware thereof.

**5.4** Counsel shall continue to be considered by the Court as counsel or co-counsel of record until a motion for substitution or withdrawal has been granted by the Court.

## **PROCEDURE 6. MOTIONS FOR CHANGE OF VENUE**

**6.1** In addition to complying with 8 C.F.R. §§ 3.20, 3.23(a), and 3.32, all motions for change of venue submitted by counsel shall contain the respondent/applicant's plea to the allegations and charge(s) in the

charging document; the designation of a country in the event of deportation/removal or the refusal to designate such a country; the relief, if any, which the respondent/applicant will be requesting; the date and time of any scheduled hearing; and a clear and detailed statement of the reasons for the request.

**6.2** Except for emergency situations or for good cause shown, all motions for change of venue shall be submitted no later than fourteen (14) days prior to the date of any scheduled hearing. Any party opposing such a motion shall file its opposition no later than ten (10) days after the filing of the motion.

**6.3** The pendency of a motion for change of venue does not excuse appearance at the scheduled hearing addressed by the motion. Unless the motion is granted in writing prior to the hearing, all parties and counsel are expected to be present at the hearing as scheduled and prepared to go forward.

**6.4** Nothing in this procedure shall be construed to limit the presiding Immigration Judge's authority to waive the provisions of this procedure and address expeditiously motions for change of venue in custody cases.

## **PROCEDURE 7. BRIEFS**

**7.1** The presiding Immigration Judge may set and extend for good cause the time for filing memoranda, briefs, and pre-hearing statements with the Court. A failure to abide by a briefing schedule set by the Court may be deemed a waiver or concession of the issue(s) in question.

## **PROCEDURE 8. TRIAL PREPARATION**

**8.1** At the Master Calendar hearing, the parties shall be prepared as follows:

A. Respondent/Applicant shall be prepared to respond to the allegations and charge(s) in the charging

document, and to concede or deny proper service of the charging document and notice of the hearing;

B. Respondent/Applicant shall be prepared to indicate all forms of relief sought and designate or refuse to designate a country for removal purposes, if necessary;

C. Both parties shall be prepared to state, in hours, the estimated time needed to present the case and request, if necessary, the presence of an interpreter at the Individual Calendar hearing; and

D. The Immigration and Naturalization Service shall be prepared to state its initial position on all issues and applications.

All parties, including counsel, must appear at the Court on time and signify their presence by signing in at the reception window. As a matter of courtesy, if attorneys arrive at the Court and personally sign in prior to the time for their hearing, their cases will be called first in the order of counsel appearance. Attorneys arriving later than the time of the scheduled hearing will be called in the normal order of arrival as reflected by the sign-in sheet.

**8.2** Requests for waiver of presence at a Master Calendar hearing must be consistent with 8 C.F.R. § 3.25 and must be filed as follows:

- Waiver of presence: A motion to waive presence of the respondent/applicant at the Master Calendar hearing pursuant to 8 C.F.R. § 3.25 must be accompanied by a written pleading. The pleading and the motion to waive presence must be filed no later than fourteen (14) calendar days prior to the scheduled Master Calendar hearing. The motion must state that counsel has advised the respondent/applicant of the consequences of failing to appear at the next scheduled hearing and, if applicable, the consequences of knowingly filing a frivolous asylum application. The motion must be accompanied by a proposed order in compliance with the order format approved by this Court. (Appendix A) Unless such order is signed by the presiding Immigration Judge, the respondent/applicant's presence is not excused.

B. Telephonic hearing: A request for a telephonic hearing must be filed no later than fourteen (14) calendar days prior to the scheduled Master Calendar hearing. The motion must be accompanied by a proposed order in compliance with the order format approved by this Court. (Appendix A) Unless such order is signed by the presiding Immigration Judge, the respondent/applicant's presence is not excused.



If counsel wishes to have his/her appearance waived, in addition to the client's, he/she may indicate so in any proposed motion submitted to the Court.

**8.3** At the Individual Calendar hearing, all parties shall be prepared to present all remaining testimony and evidence on all issues, including rebuttal.

**PROCEDURE 9. ATTORNEY/REPRESENTATIVE'S CHANGE OF ADDRESS**

**9.1** If an attorney/representative in any pending matter changes address, he/she shall advise the Court by written notification solely and specifically for that purpose within ten (10) days of any such change.

**PROCEDURE 10. WAIVER**

**10.1** An Immigration Judge shall have the authority to waive any of the aforementioned procedures in a particular instance in the interests of justice or for good cause shown.

